

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

|                              |   |                           |
|------------------------------|---|---------------------------|
| ERIC DEWAYNE CATHEY,         | § |                           |
| Petitioner,                  | § |                           |
|                              | § |                           |
| v.                           | § | No. 4:15-CV-2883          |
|                              | § | <b>DEATH PENALTY CASE</b> |
| BOBBY LUMPKIN, Director,     | § |                           |
| Texas Department of Criminal | § |                           |
| Justice, Correctional        | § |                           |
| Institutions Division,       | § |                           |
| Respondent.                  | § |                           |

**RESPONDENT LUMPKIN’S OPPOSED MOTION FOR A PROPOSED  
SCHEDULING ORDER**

Pursuant to the Court’s order from March 31, 2022, the parties have conferred but are unable to agree on a joint proposed scheduling order. *See* ECF No. 43. In accordance with the Fifth Circuit’s authorization order, “[t]his Court must conclusively decide whether federal law provides Cathey a second opportunity for habeas review.” ECF No. 31; *see In re Cathey*, 857 F.3d 221, 226 (5th Cir. 2017) (“Our grant of a motion to file a successive petition is ‘tentative in the following sense: the district court must dismiss the motion that we have allowed the applicant to file, without reaching the merits of the motion, if the court finds that the movant has not satisfied the requirements for the filing of such a motion. The district court then is the second gate through which the petitioner must pass before the merits of his or her motion are heard.’”). The Court is also required to address timeliness. *Id.* at 240-41. On

remand, this Court must “effect [the Fifth Circuit’s mandate]” and “do nothing else.” *Perez v. Stephens*, 784 F.3d 276, 280 (5th Cir. 2015) (quoting *General Universal Sys., Inc. v. HAL, Inc.*, 500 F.3d 444, 453 (5th Cir. 2004)). As such, Respondent proposes the following scheduling order:

Petitioner and Respondent shall file simultaneous briefing on or before 120 days from the Court’s entry of a scheduling order limited solely to addressing this Court’s jurisdiction, *see* 28 U.S.C. § 2244(b), and any argument regarding the timeliness of the petition, *see* 28 U.S.C. § 2244(d)(1).

The Fifth Circuit’s order limits this Court’s initial review to successiveness and the statute of limitations. Nevertheless, in future briefing, the Respondent reserves the right to raise any defense or argument, including but not limited to those described in Rule 5 of the Rules Governing Section 2254 Cases, or those found in 28 U.S.C. §§ 2241, 2244, 2254, with respect to the present or any amended petition and any claim or evidence attached or raised therein.

Dated: April 29, 2022

Respectfully submitted,

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Attorney General of Texas

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ATTORNEYS FOR RESPONDENT

### **CERTIFICATE OF CONFERENCE**

I hereby certify that I corresponded with counsel for Petitioner via e-mail and was unable to come to an agreement regarding a proposed scheduling order.

s/ Eran S. Sharon  
ERAN S. SHARON  
Assistant Attorney General

### **CERTIFICATE OF SERVICE**

I do hereby certify that on April 29, 2022, I electronically filed the foregoing pleading with the Clerk of the Court for the U.S. District Court, Southern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a “Notice of Filing” to the following attorneys of record, who consented in writing to accept this Notice as service of this document by electronic means.

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s/ Eran S. Sharon  
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